

# BLANKROME

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April 20, 2023

**FILED VIA ECF**

Honorable Paul A. Crotty  
United States District Court  
500 Pearl Street  
New York, NY 10007

4/21/2023

A teleconference will be held on June 12 at 2:30PM.

*As ordered*

*Paul A. Crotty*  
*OSA*

Dear Judge Crotty:

We represent Petitioner Energetic Tank, Inc. in this matter. We write this letter on behalf of all parties to update the Court concerning the status of discovery and on behalf of all parties participating in Phase II discovery to respectfully request a 45-day adjournment of the telephonic conference currently scheduled for April 26, 2023 at 3 pm., and also to request that the Court reset the discovery cutoff date for the death claims from June 7, 2023 to September 7, 2023. The United States does not oppose this request.

**Case Scheduling and Mediation**

As explained in greater detail below, the parties have made substantial progress on Phase II damages discovery with respect to both the injury and the death claims. Due to the availability and location of witnesses and documents, however, this process has proved challenging notwithstanding the ongoing cooperation and diligent efforts of counsel. For these reasons, we request that the Court (i) adjourn the telephonic conference currently scheduled for April 26, 2023 at 3:00 pm for approximately 45 days to allow the parties to make further progress on fact and expert discovery and to attempt to negotiate a structure for resolving these cases through mediation or trial; (ii) order the parties to file a joint status letter with the Court three days in advance of the rescheduled telephonic conference; and (iii) reset the death claim fact and expert discovery cutoff to September 7, 2023 to align it with the injury claim discovery schedule.

The parties believe that some or all claims may be suitable for mediation in the near future. We intend to meet and confer in the coming weeks regarding a structure for mediating the claims, including, if necessary, a formal mediation process at the close of discovery for all remaining claims. The parties expect that they will be in position to propose a mediation structure to the Court in advance of the rescheduled telephonic conference.

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The parties also intend to meet and confer regarding a proposed trial structure for any unresolved claims and will endeavor to provide the Court with an update at the telephonic conference.

## **Discovery Update**

With respect to the injury claims, the parties are currently conducting Rule 26 witness depositions, having completed approximately 56 since our last conference, with approximately 20 remaining. Simultaneously, Petitioner's experts are conducting physical and psychiatric IMEs of the injury claimants, which has involved a two-step process of conducting psychological testing followed by psychiatric examinations. We anticipate many of these to be concluded within the next 2-3 months. It will also be necessary for Petitioner's vocational expert to examine the claimants who assert economic loss claims; however, these remain to be scheduled. All parties have been cooperating to facilitate this process in a timely manner; however, some of the logistics have been challenging because of the location and schedules of some of the claimants and witnesses, some of whom are located overseas and some of whom are on active duty in the Navy. The parties anticipate it may be necessary to request an extension of the discovery deadline for the injury claims; however, we consider that we will have a clearer picture of realistic timing in about 45 days, once most of the fact depositions have been completed and we are further along in the psychological IME process.

With respect to the death claims, most fact discovery is complete, except for a couple of depositions which remain to be scheduled. The parties have not yet exchanged expert reports. The current discovery cutoff date for the death claim fact and expert discovery is June 7, 2023. In the circumstances, the parties respectfully request that this date be extended to September 7, 2023, which would bring it back in line with the currently discovery deadline for the injury claims.

We remain available to answer any questions the Court may have in respect of the requested relief.

Respectfully submitted,  
*/s/ Thomas H. Belknap, Jr.*  
Thomas H. Belknap, Jr.

Cc: All counsel (via ECF)